



DEPARTMENT OF THE ARMY
U.S. Army Corps of Engineers
WASHINGTON, D.C. 20314-1000

REPLY TO
ATTENTION OF:

CECC-T (27-1a)

12 November 1997

MEMORANDUM FOR COMMANDERS/DIRECTORS, USACE COMMANDS

SUBJECT: Release of Information to Foreign Nationals and Foreign Governments

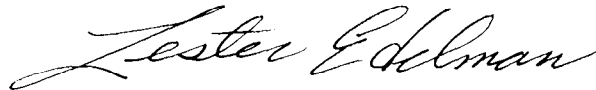
1. The Office of Security and Law Enforcement issued ER 380-1-18, Technology Transfer, Disclosure of Information and Contacts with Foreign Representatives on 1 August 1996. The ER supplements AR 380-10 (same title). These regulations establish policy governing the release of certain types of information to foreign nationals and foreign governments. Compliance with this ER will have an impact on USACE FOIA procedures. Because the relationship between the ER and the FOIA is unclear, I am issuing the following guidance.
2. The information covered by these regulations includes classified military information (CMI) and controlled unclassified information (CUI). AR 380-10, 1-5(a)(1). CUI includes "information subject to the Privacy Act of 1974 or otherwise exempt from mandatory disclosure" under the FOIA, technical information on military equipment systems, and sensitive operations security information. AR 380-10, 1-19(b)(1). Information not covered by the regulations includes information "actually or potentially in the public domain, that is, suitable for release to the public at large" and Privacy Act information, among others. AR 380-10, 1-5(d), 1-19(b)(2).
3. All FOIA requests from foreign nationals or governments will be forwarded to the appropriate FOIA Office for processing. Standard FOIA processing procedures will be followed. If the FOIA Officer determines that the requested documents are either CMI or CUI and should be **released**, he will forward the documents, with a memorandum explaining his rationale, through the appropriate Foreign Disclosure Officer (FDO) to the Headquarters Security and Law Enforcement Office (CEPM-S-FL). If the FOIA Officer determines that the documents should be **withheld**, he will follow the normal FOIA denial procedures established for his office. Appeals will be processed pursuant to current procedures, and the cover memorandum will cite AR 380-10 and ER 380-1-18. Release of documents that are neither CMI nor CUI will be at the discretion of the FOIA officer.
4. All requests for information from foreign nationals or governments, that do not qualify as FOIA requests, will be coordinated through the appropriate FDO and CEPM-S-FL. ER 380-1-18, Section 5. Information in the "public domain" or "commercially available" may be disclosed without prior CEPM-S-FL approval.
5. In determining whether any information should be released to foreign nationals or governments, the substantive provisions in the ER and the AR should be reviewed along with the FOIA Exemptions.

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6. Please contact your FDO or security office, to discuss these procedures and to obtain a copy of ER 380-1-18. These FOIA procedures will impact the FDO's responsibilities at paragraph 5(a)(4). If you have any questions concerning this guidance, please contact Mr. Richard Frank at (202)761-8557. FOIA Officers should add this guidance to the FOIA GUIDANCE DESKBOOK.

FOR THE COMMANDER:

A handwritten signature in cursive script that reads "Lester Edelman".

LESTER EDELMAN
Chief Counsel

CF:
USACE FOIA Officers